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**From:** Chad Colton <chadcolton@markowitzherbold.com>  
**Sent:** Wednesday, January 07, 2015 2:07 PM  
**To:** Klingbeil Rick  
**Cc:** Garganta, Angel A.; Green, Micol Sordina; Meyerhoff, Robert L.; Jeff Edelson; Leah Estep; Brady Mertz; Ashley Allport; Brooks Cooper  
**Subject:** RE: Walters v. The Vitamin Shoppe - Submission of Overlong Brief

Rick,

The brief was not submitted to coincide with the holidays. It was the result of the timing of the third amended complaint. It was certainly clear from the outset that the response date would fall on Dec. 29.

To be clear, we are not objecting to plaintiff having an extension to file. We are objecting to plaintiff's attempt to avoid the local rule barring oral argument, for a filing that will be nearly a month late. The compromise position that we proposed strikes me as eminently reasonable, but you are of course free to file your motion. We will submit a brief opposition noting our objection on the sole ground described above. Thanks.

**Chad M. Colton** | Shareholder

**Markowitz Herbold PC**

1211 SW Fifth Avenue, Suite 3000 | Portland, OR 97204-3730

T (503) 295-3085 | [Bio](#) | [Web](#)

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**From:** Klingbeil Rick [mailto:rick@klingbeil-law.com]  
**Sent:** Wednesday, January 07, 2015 9:33 AM  
**To:** Chad Colton  
**Cc:** Garganta, Angel A.; Green, Micol Sordina; Meyerhoff, Robert L.; Jeff Edelson; Leah Estep; Brady Mertz; Ashley Allport; Brooks Cooper  
**Subject:** Re: Walters v. The Vitamin Shoppe - Submission of Overlong Brief

Chad:

I see this as an unfortunate track to go down in this case, but it's your and your client's decision. Particularly given that we readily consented to an over length brief, and that brief was filed to coincide with the Christmas holidays.

Regardless, unless I hear otherwise, I will file my motion to reset the briefing schedule this evening, and indicate that defendant objects.

Thank you,

Rick Klingbeil

On Jan 6, 2015, at 4:04 PM, Chad Colton <[chadcolton@markowitzherbold.com](mailto:chadcolton@markowitzherbold.com)> wrote:

Rick,

While we typically extend professional courtesies, there needs to be some middle ground here. Pursuant to LR 6 and LR 7-1, plaintiff's opposition brief was due on December 29, 2014. Plaintiff did not file an opposition on that date, nor did plaintiff timely request an extension of time to respond. In fact, we did not hear anything about the late response until today – nine days after the response was due. Plaintiff now seeks an additional 10-day extension. Moreover, plaintiff is on its third complaint in this case, which has been pending for nearly six months without any judicial intervention. Our client is anxious to resolve this case on the merits, and there have been considerable delays thus far. We are now in a situation where we will need to reset the hearing date on Vitamin Shoppe's motion due to a late filing.

Under Ninth Circuit case law, Vitamin Shoppe would be well within its right to move to strike any opposition that plaintiff files. In addition, under LR 7-1(d)(4), plaintiff has waived its right to oral argument at the hearing. In an effort to compromise and extend a professional courtesy, we are willing to stipulate to a revised briefing schedule and reset the date of the hearing, but we do not believe that it is fair that plaintiff be permitted to extend its response date and thereby resurrect its right to oral argument. We are accordingly willing to file a joint motion (1) requiring plaintiff to file an opposition to Vitamin Shoppe's motion by January 16, 2015, with no right to oral argument from plaintiff; (2) requiring Vitamin Shoppe to file any reply by February 5, 2015; and (3) resetting the hearing to a date that is convenient for the court, except for the week of February 23 (we will be unavailable that week).

Please let us know if this resolves the issue. Thanks.

**Chad M. Colton** | Shareholder

**Markowitz Herbold PC**

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**From:** Klingbeil Rick [<mailto:rick@klingbeil-law.com>]

**Sent:** Tuesday, January 06, 2015 12:07 PM

**To:** Garganta, Angel A.; Green, Micol Sordina; Chad Colton

**Cc:** Meyerhoff, Robert L.; Jeff Edelson; Leah Estep; Brady Mertz; Ashley Allport; Brooks Cooper

**Subject:** Re: Walters v. The Vitamin Shoppe - Submission of Overlong Brief

Counsel:

Given the holidays, etc. we did not complete our Response to your Motions to Dismiss. I intend to ask the court for a ten day extension from today, making it due on Friday, January 17, 2015. I suspect the court will also need to move the hearing date. Do you consent or oppose my request?

Thank you,  
Rick Klingbeil

On Dec 2, 2014, at 5:15 PM, Garganta, Angel A. <[AGarganta@venable.com](mailto:AGarganta@venable.com)> wrote:

Thanks Rick. We will file an unopposed motion with the Court.

**From:** Rick@klingsbeil-law.com [mailto:rick@klingsbeil-law.com]  
**Sent:** Tuesday, December 02, 2014 5:13 PM  
**To:** Green, Micol Sordina  
**Cc:** Garganta, Angel A.; Meyerhoff, Robert L.; Chad Colton; Jeff Edelson; Leah Estep; Brady Mertz; Ashley Allport; Brooks Cooper  
**Subject:** Re: Walters v. The Vitamin Shoppe - Submission of Overlong Brief

No objection to overlong brief.

Sent from my iPhone

On Dec 2, 2014, at 4:27 PM, Green, Micol Sordina <MSGreen@Venable.com> wrote:

Rick,

We are in receipt of Plaintiff's Second Amended Complaint, and will be filing a motion to dismiss/strike the Second Amended Complaint on largely the same grounds as those raised during our conference of counsel on November 20th. Given the numerous issues raised by the Second Amended Complaint – including, but not limited to, responding to the national class allegations and the two new causes of action added by Plaintiff – we do not believe 35 pages will be sufficient for our motion to dismiss/strike. Please confirm that you agree to our filing of an overlong brief of a maximum of 50 pages. Once we receive your confirmation, we will file a motion with the Court. Our brief is currently due December 11<sup>th</sup>, so we would appreciate a response to this email as soon as possible so that the Court has sufficient time to rule on our motion before the filing deadline.

Thanks,

Micol S. Green, Esq. | Venable LLP  
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